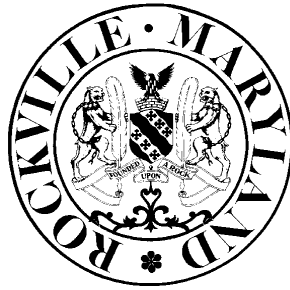


Nonconformities



White Paper Discussion
City of Rockville, Maryland

October 24, 2005

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**City of Rockville
Zoning Ordinance Revision
Issue Paper**

Nonconformities

I. INTRODUCTION

A nonconformity is a use or development standard (i.e. structure or improvement) that was lawfully created prior to the effective date of a zoning ordinance or a subsequent amendment thereto. The nonconformity does not meet the current zoning ordinance's minimum requirements for the district in which it is located. Without an allowance for nonconformities, the use, lot, structure, or feature would be illegal. When a zoning code provides provisions for a nonconformity, the use is legally permitted to continue, though it may be out of synch with the overall vision of a zoning revision or amendment. Nonconformity regulations never protect uses, lots, or structures, which were not lawfully established or constructed in accordance with the regulations in effect at the time of their creation.

Nonconformity Definitions

Grandfathering – A development standard or use, which would otherwise be considered a nonconformity, but which is allowed to be modified, repaired, or replaced in accordance with the development standards in effect at the time the development was originally approved.

Nonconformity – A nonconforming development standard or use that was *lawfully* created prior to the adoption of a zoning ordinance or amendment which 1) does not meet the current zoning ordinance requirement for the zone in which it is located and 2) which must be brought into compliance with current zoning regulations when the use or development standard is terminated or altered, as is defined in the zoning regulations.

Nonconforming Development Standard – The dimensions of a lot, or a building, structure, or other lot feature (such as, but not limited to, parking, lot coverage, green space, etc.) located on the lot that was lawful when established but no longer conforms to the requirements of the zone in which it is located as set forth in the Zoning Ordinance, because of adoption of a zoning amendment or comprehensive zoning revision. The term “nonconforming development standard” is a broad category and can apply to 1) a nonconforming lot, 2) a nonconforming structure, and 3) a nonconforming lot feature. There are particular considerations with regard to each type of development standards.

Nonconforming Lot – A lot which met the dimensional requirements for the zone in which it is located at the time of subdivision but which does not meet the current regulations for lot area, width, depth or access.

Nonconforming Lot Feature – One type of nonconforming development standard, which includes development regulations outside of structural requirements. Examples of lot features include, but are not limited to, parking, landscaping, screening, access, and lighting.

Nonconforming Structure – A building located on a lot which does not conform with bulk regulations established in the zoning ordinance, such as setback, height, encroachment, in addition to any applicable architectural requirements.

Nonconforming Projects – Development applications in the pipeline at the time the comprehensive zoning revision will be adopted.

Nonconforming Use – A use that was lawful when established but which no longer conforms to the requirements of the zone in which it is located, as set forth in “Use Restrictions” regulations of the Zoning Ordinance (currently in Art. VII, Division 2) because of adoption or amendment of the zoning ordinance.

This paper will discuss the general and specific regulations associated with nonconformities, as well as the implementation methods to deal with amending nonconformities. A brief discussion on amortization to require that nonconformities meet newly adopted code standards is also provided. Though discussions on nonconformities will be ongoing throughout the zoning revision process, the staff recommends a number of alterations to the code as proposed in a 2002 text amendment that was presented to the Planning Commission.

II. WHAT ARE NONCONFORMITIES?

Nonconformities are vested rights that “run with the land.” These rights continue in force when the land is sold. Zoning codes allow nonconformities to continue to protect landowner’s interest in the property. In certain situations, these rights can be worth a substantial amount of money. While nonconformities may continue, nonconformity regulations curtail substantial future investment in properties with nonconforming attributes to bring about the improvement or elimination of the nonconformity.

The theory behind nonconformities is that the property owner should not be immediately penalized for an action affecting his property that was not done at his instigation (i.e. changes to zoning regulations such as setbacks or height measurement). In most cases, these nonconformities may be continued indefinitely. Replacement of the nonconformity by a use or development that conforms to all current zoning standards is preferred to carry out the intent of the current land use vision and policy of the City. While maintenance is encouraged for nonconforming developments, expansions that would increase the nonconformity are prohibited. If circumstances change, however, such that the nonconforming use or other nonconformity is removed, it cannot be replaced. Any subsequent development must comply with all aspects of the current code.

Though many people use the terms “grandfathered” and “nonconforming” interchangeably, there is a difference between the two. While both allow existing land uses, lots, structures, or lot features to remain in existence without coming into compliance with updated zoning requirements, grandfathering a use or structure that is otherwise illegal, makes the continuation of that use or structure legal. In other words, grandfathering is intended to confirm the legality of development in cases where the zoning standards have been subsequently modified, and the development does not conform to the new standards. Where properties are affected by a comprehensive rezoning or other amendment to the zoning text, a grandfathered development is confirmed under the standards under which it was originally developed. Grandfathered uses or structures may be modified (in most instances within the guidelines of the original zoning in effect at the time the property was originally developed) without losing their legal authority to exist. Nonconformities, however, while permitted to continue, are still not in legal compliance with the code. As a result, any substantial modification of the nonconformity (as defined within the code) can revoke the authority to continue that nonconformity.

III. GENERAL REGULATIONS

There are a number of general regulations applicable to all nonconformities, both of use and development standards. Nonconforming rights only apply to a structure, use, lot, or lot feature as it existed at the time of the zoning change. These general regulations are meant to quell the misconceptions regarding nonconformities. The following is a list of general regulations to be applied to nonconformities in the zoning revision, though the actual language used in the code may differ.



Nonconformities can upset the integrated puzzle of city planning.

- For the nonconformity to be legal, the use or development standard must have been legally established before the effective date of the zoning regulation that prohibits it. In other words, if a use, structure, lot, or lot feature existed for a long time, that existence alone does not make it legal.
- Regardless of the fact that a municipality has not pursued enforcement of a nonconformity, a violation is still a violation and non-enforcement does not make a violation legal.
- A person who asserts that a nonconformity exists has the burden of proving that it exists, so that it may continue. The burden of proof is on the property owner to demonstrate that a nonconformity is allowed. A landowner has a vested right to continue a nonconformity if the landowner establishes the validity of that use, or development standard (lot, structure, lot feature).
- Changes of ownership, tenancy, or management of an existing nonconformity are permitted but such nonconformities continue to be subject to the provisions of the code.
- Minor repairs and maintenance should be permitted and encouraged. Major repairs and maintenance require further regulation. Alternative regulations for major repair approval are found in the “Nonconformity Amendment” section below.

IV. FORMS OF NONCONFORMITIES

There are a number of land use nonconformities that can arise when a city revises a zoning code. There are five kinds of nonconformities - lots, uses, structures, lot features, and projects. In Rockville, a number of these types of nonconformities have been grouped together under the classification of “development.” The current code, therefore recognizes only two categories of legal nonconformities, 1) use and 2) development. The zoning text amendments proposed by Staff in 2002 for nonconformities recommended modifying that terminology to “development standards” to clarify that the term includes lots, structures, and other lot features.

The following is a brief discussion of the various types of nonconformities and the considerations associated with each.

- A. **Nonconforming Uses** – Nonconforming uses are uses on the land or in structures that would not be permitted under the current Zoning Ordinance, but which were established before the regulations went into effect. Nonconforming uses are often permitted, subject to modification limitations as in the City of Rockville’s current standards. An example of a nonconforming use is a retail use in a residential district.

Typical zoning regulations on nonconforming uses include the restriction of changes, extensions, expansions, or enlargements of the use from the form and size it existed in at the time it became nonconforming. In addition, if a use is ceased for more than a set period of time, any future uses must be in compliance with the City’s Zoning Ordinance’s list of acceptable uses for that zone. Current nonconformity standards provide that a nonconforming use terminates when it is abandoned for 3 months. Recent proposed text amendments suggest 6 months. Additional considerations regarding termination are provided in the section of this paper of the same name.

- B. **Nonconforming Development Standards** – Again, under the 2002 proposed nonconformity amendments, staff recommended using the term “development standards” with relation to nonconformities to encompass nonconforming lots, structures, and other lot features.

1. **Lots** – Nonconforming lots were legal when they were subdivided but do not meet the current regulations for lot size - width, depth, or access. Where regulations for nonconforming lots are provided, the requirements generally apply only to undeveloped lots, i.e. the lot has no substantial structure on it, unless specifically stated to apply to developed lots.

In Rockville, many nonconforming lots originate from the original zoning code established in the 1930’s. Under that code, 5,000 square foot lots were permitted in what are now 6,000 square foot lot districts. Special provisions exist in section 311 of the current Zoning Ordinance for those lots.

- a. Public Acquisition - Other nonconforming lots have been created from public seizure of land for public purposes. There are no special regulations for these lots. When this occurs, structure renovations may no longer meet setback requirements. This policy, therefore, restricts maintenance and upkeep of property. A new section of the code may be required to address this concern and to allow continual maintenance, which the city wishes to encourage.

In 2002, staff presented to Mayor and Council a proposed text amendment to the nonconformities section of the Zoning Code. Among the proposed amendments was a regulation on nonconformities through public taking. Specifically, nonconforming structures that were created through a taking under eminent domain or another government action may be repaired, altered, or reconstructed if it is an otherwise lawful use, as long as the nonconformity is not otherwise

extended. If, however, the property is subject to total redevelopment, the new development must conform to all provisions of the zoning ordinance.

- b. Single-family dwelling exception - Some communities provide exceptions for single-family dwellings. In other words, all nonconforming lots may be used for single-family dwellings. Particular requirements for single family allowances include that 1) the lot is in a residential district, 2) the dwelling can meet all required setbacks for the district and 3) no new dwelling unit may be added to a nonconforming lot that already has one or more individual dwelling units. The proposed nonconformities language from 2002 recommended an exception for bringing single-family structures into compliance.
 - c. Nonconforming lots and infill - According to the Maryland Department of Planning, treatment of lots of record can have particular influence over whether infill sites are legally or viably buildable. When zoning standards are imposed subsequent to neighborhood build-out, many lots are precluded from development because of minimum size restrictions. Such shortfalls may only amount to a couple of hundred square feet, and exceeding the standards will not compromise the neighborhood's character. A number of Maryland jurisdictions have employed existing small lot amnesty, to return such lots to development circulation. For example, in Rockville, special bulk regulations have been provided for 5,000 square foot lots.
 - d. Merger - Many nonconforming lot regulations compel the merger of lots, under the same ownership, to permit development on the nonconforming lot within the standards of the current zoning ordinance. The 2002 amendments allow for substandard lots to be subdivided and merged to create an allowable lot under certain situations. These types of regulations may be unenforceable where the owner can show that (a) both lots were acquired before the ordinance, (b) both were acquired with the intent to improve both, and (c) to apply the merger provision would devalue the unimproved lot to such a degree that it would amount to "undue hardship." A merger provision, therefore, should be clear whether the intended merger is for unimproved with improved lots, whether the requirement is meant to merge lots only where one or more lots were acquired before and one or more were acquired after enactment, or whether the regulation applies as well to lots all of which were acquired beforehand.
2. **Structures** - These are buildings that were legal at the time they were constructed, but encroach into the current yard setbacks or exceed the current height or area limitations. If additional architectural standards (found in the zoning code) are placed on structures, the failure to include these characteristics can also cause a nonconforming structure.



Nonconforming structures can be very noticeable.

Like nonconforming lots, nonconforming structure requirements can have a greater impact on property owners of single-family houses. In many cases, the impact of the nonconformity is minimal. The 2002 staff recommendations for nonconformities include exceptions for single-family dwellings which do not perpetuate the nonconformity indefinitely but which allow for minor exceptions. In particular, if a house is torn down or damaged to the foundation on two or more sides, it should be made conforming. If substantial alterations are proposed (for example, second floor additions, or changing the footprint), the house should also be made conforming. Anything less than that level of demolition or reconstruction does not require compliance with the current code standards regardless of the level of demolition. All Historic District houses, however, may be reconstructed in the same location as the original structure. As mentioned in other white paper discussions, the comprehensive revision will look at the definitions of demolition and substantial alterations.

3. **Lot Features** – Like other nonconformities, a nonconforming lot feature is a physical feature of lot development (landscape materials, driveways, parking lots, etc.) that was lawfully established (or for which a vested right had been established) prior to the effective date of the Zoning Ordinance or a subsequent amendment. Nonconforming lot features include those that lack or fall short of required minimum standards and could be in noncompliance with requirements such as impervious surface limitations, setbacks, access, off-street parking and loading spaces and design, buffer width and landscaping design, screening height and design, and outdoor lighting design.

Typical nonconforming lot feature regulations include the limitation to increase the degree or extent of the nonconforming lot feature. Many of these lot features are required to conform to current zoning standards within a set timeframe. More on amortization can be found in section seven below.

- C. **Nonconforming Projects** – At the time of the adoption of a revised zoning code, there will be projects in various stages of approval. A number of those projects, designed with the current zoning regulations in mind, will result in a nonconformity under the revised regulations. Guidelines should be established to determine which projects may continue to be developed under existing standards and which must be amended to conform to new regulations. Recommended dividing lines for continued approval *may* include:

- All nonconforming projects on which construction was begun before the effective date of the zoning revision, or which have expended a set percentage (for example, at least 10%) of the cost of the project by the effective date of the code, may be completed in accordance with the terms of their permits, so long as the permits were validly issued and remain in effect.
- If construction has not begun, and if less than a set percentage of the total cost of the project has been expended, all work on the nonconforming project shall cease on the

effective date of the zoning code, and all permits previously issued for work on nonconforming projects may begin or may be continued pursuant to new approval in accordance with the terms of the revised zoning code.

- If a development is to be completed in stages, each phase under construction will be reviewed individually, and separately from other phases.
- The permit-issuing authority may be required to issue new permits or approvals in some situations. The City will consider issuing new permits or approvals, at no additional cost to the applicant, if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed their position in some substantial way in reasonable reliance on the land-use law as it existed before the effective date of the code. The permit issuing authority would be required to consider all relevant factors, including but not limited to, the amount of surveying, architectural, or engineering work undergone for the plans; and the amount of improvements installed which are contingent on the development of the project as proposed.

V. NONCONFORMITY AMENDMENT

A primary nonconformities consideration is to determine to what degree nonconformities may be changed and still be considered a nonconformity. In cases of destruction by fire, flood, or other catastrophe, the owner may wish to completely rebuild the nonconforming structure or to renew the nonconforming use after a substantial period of time. In those situations, timeframes and other limitations should be placed on the authority to reconstruct or rebuild.

Owners may, for a number of reasons, desire to voluntarily renovate or expand part of a nonconformity. These situations often call for greater restrictions on the ability to modify the existing nonconformity. The following are considerations, which may be used to authorize modifications of nonconformities.

A. Level of Amendment

The degree that a nonconformity is altered can have different impacts in different areas of the city and based on different types of nonconformities. Minor changes of a use (for example allowing a catering service to have 2 dining tables changes the use from strictly catering to a small restaurant) may have limited impact while major changes can have a strong impact (changing a small catering service to a pizza delivery restaurant). The same can be said of changing a development standard. For example, an expansion of a parking lot within setbacks may not have as great an impact where there already exists substantial buffering from the nonconforming parking lot area; as the impact expansion of a 3-story nonconforming building may have. Similarly, alterations to nonconforming commercial uses or structures which abut other commercial districts will not have as large an impact as the expansion of a commercial nonconformity on lots abutting a residential district.

Solutions to this difference may take different forms. The questions posed when addressing alterations include:

1. Whether to make an entire building or lot (use, structures, and lot features) conform to current zoning requirements if any addition is added; or whether to have only the addition conform.
2. Whether to make certain categories of alterations conform entirely if any change is made, for example parking lots.
3. What requirements are there to modify the nonconformity if the nonconformity changes, through no fault of the property owner? For example, if all landscaping dies, is the owner then required to bring the landscaping into compliance (or even required to bring entire building into compliance).

A recent text amendment to the zoning ordinance addressed the impacts of institutional uses on residential neighborhoods. There, the City adopted a policy to allow nonconforming parking facilities to be maintained and repaired so long as the nonconformity is not increased. In addition, modifications to the nonconformity may be allowed, even though such modifications do not bring the entire facility into full compliance; however, if any portion is brought into compliance, the nonconformity for that portion cannot be reestablished. A method of addressing modifications in portions may be applied for expansion of certain structural or lot feature nonconformities.

B. Approval

1. Current Process

Under the current code, expansion, alteration, or enlargement of the use or development nonconformity is permitted within set guidelines. In particular, alterations may be made only if 1) the alteration is for the purpose of conforming to the use requirements of the code, or 2) it is done to maintain the building or structure in safe repair. Major reconstruction is never permitted nor may the alterations expand or extend the development nonconformity. Approval falls under the use permit and development approval processes. Zoning Enforcement is responsible for ensuring these standards are enforced.

2. Permit Approval

An alternative, more formal process, to current approval standards is to require the issuance of nonconforming permits. Like other permit approvals, the permit issuing authority would be required to consider the affect approval of the permit will cause on surrounding neighbors and may require any conditions particular to the individual application. The following are three examples of permits that would provide the City with a tracking system for many nonconformities. If, through the comprehensive

zoning revision, any of these permit processes are included in the zoning revision, the particular requirements for each will be determined in the drafting stages of the code.

- a. Amendment Permit - Through this process, permits would be issued at the time of *any changes* to use, alterations to a structure or development, or any other modification to the existing nonconformity that do not bring the lot, structure, or use into compliance with the current zoning code standards. The permit process would allow these changes to be reviewed on a case-by-case basis to determine the individual degree of modification from minor repair to major renovation.
- b. Use Discontinuation Permit - In addition, a permits for nonconformities could be granted when a use is discontinued for a set amount of time; but the property owner would like to renew the principal activity under the continuing nonconformity. This permit will likely only be approved if the issuing authority finds that elimination of a particular nonconformity is not reasonably possible.
- c. Vested Rights Permit - An additional permit to consider imposing to ease the confusion of nonconformities is a vested rights permit. While some projects previously approved prior to the adoption of the new zoning code or any subsequent amendment may meet set standards to allow for their continuation, a vested rights permit would allow additional projects the option to continue if they meet established approval standards. Specific standards to be found would be listed in the revised Zoning Ordinance. Examples of relevant considerations include the amount of expenditures to obtain necessary permits prior to the effective date of the ordinance or amendment and the extent that expenditures are recoverable. Another consideration is the good faith effort of the applicant for a vested rights permit, in acting pursuant to known proposed changes. Phases of projects will be considered individually.

VI. TERMINATION OF AUTHORITY

An additional concern of nonconformities is the termination of their rights. The following list demonstrates the types of situations through which a nonconformity can be terminated. The current standards are presented as well as proposals under the 2002 recommended changes.

A. Termination of Use

1. Abandonment – Nonconforming uses can be terminated if the owner fails to maintain a continual operation of the use.
 - a. Current: Cessation of such use for a period of at least three (3) calendar months;
 - b. 2002 Proposal: 6 months or if the property remains vacant for 12 months (may request 6 month extension of vacancy for good cause shown). When a property is being actively marketed for tenants to continue the use, the use is not deemed to have stopped.

2. Destruction - If the structure in which the use is operated is destroyed, the use may be required to stop. The considerations with destruction are 1) the involvement of the owner in the destruction, 2) the amount of destruction of the structure.
 - a. Current: Damage or deterioration by fire, flood, explosion or any other cause to the building or structure in which the nonconforming use is conducted and the cost of repairing such damage or deterioration exceeds fifty (50) percent of the replacement cost of such building or structure; or
 - b. 2002 Proposal: Fire, flood, explosion or any other catastrophic event results in damage to the building or structure encompassing the nonconforming use that exceeds 50% of the replacement cost of the building or structure
3. Superseded – If a use is replaced with another use that is permitted in the current zoning regulations, the nonconformity may not continue.
 - a. Current: Cessation of a nonconforming use and establishment of a prohibited, permitted or special exception use.
 - b. 2002 Proposal: The nonconforming use is replaced by a permitted or special exception use. If the property owner as received a validly issued building or occupancy permit, approval and execution of modifications or renovations to continue the use will not terminate the nonconformity.

B. Termination of Development Standard

There are certain situations where alterations to the nonconforming structures can terminate the permitted continuation of the nonconformity. Like termination to a nonconforming use where the structure is altered, the considerations for these nonconformities are 1) the involvement of the owner in the destruction, 2) the amount of destruction of the structure.

1. Current - A development nonconformity shall terminate if damage or deterioration by fire, flood, explosion or any other cause to that part of a building or structure constituting a development nonconformity exceeds fifty (50) percent of the replacement cost of such development nonconformity.
 - a. A development nonconformity may be extended throughout those parts of the building completed or substantially completed at the time of adoption of the code;
 - b. Where a part of the building or structure constitutes a development nonconformity, alterations, expansions, and enlargements may be made to the building or structure provided they do not expand or extend the nonconformity;
 - c. Structure alterations may be made only if the alteration is for the purpose of eliminating the nonconformity or maintaining the nonconformity in safe repair, but alterations to eliminate a nonconformity shall not include reconstruction.
2. 2002 Proposal - Except as provided below, if a building or structure including a development standards nonconformity is damaged or deteriorated by fire, flood,

explosion or any other catastrophic event that exceeds 50% of the replacement cost, any repair or replacement must bring the building or structure into conformance with the requirements of the ordinance.

- a. If a portion of a building or structure is nonconforming, alterations, expansions, or enlargements may be made to the building or structure if they do not expand or extend the development standards nonconformity. Alterations of the portion of the building that constitutes a development standards nonconformity may be made only for the following reasons:
 - i. Maintain the building or structure in safe repair
 - ii. Improve the façade to enhance appearance
 - iii. Comply with the requirements of the ADA or other safety code
- b. Any major structural or major reconstruction that exceeds 50% or more of the gross floor area of the existing building or structure, except a one-family dwelling, must bring the building and any development standards nonconformities into compliance.
- c. If there is destruction or demolition of the dwelling down to the foundation of 2 or more walls or an expansion of more than 100% of the existing floor area, of a single-family home, the dwelling must be brought into compliance.
- d. In a designated historic district, any dwelling may be repaired or replaced in kind in its original location, subject to approval of the Historic District Commission.

Other communities provide longer time periods before termination is determined, while still other communities have stricter regulations to more easily terminate a nonconformity. Staff will review the standards and determine if any amendments are needed.

VII. AMORTIZATION

Nonconformity termination regulations are not the only alternative to compelling “immediate cessation” of nonconformities. Government may delay the effective date of regulations against pre-existing uses, lots, structures or lot features long enough to permit the owner to amend the deficiency. This process is called amortization.

Amortization schedules often vary by the type of nonconformity that the community desires to eliminate. The most common nonconformities to which an amortization schedule is attached are signs, sexually based businesses, and other non-residential uses; however, nonconforming structures, design, and land use lot features can all be required to be brought into compliance if the proper amount of time is provided to amend the situation. The following considerations will be reviewed if any amortization schedule is recommended in the zoning revision.



Amortization requires that nonconformities be brought into compliance within a set time period.

- The degree of nuisance or other adverse effects each type of nonconformity creates;
- The size of the investment in the lot feature that creates the nonconformity and the relative ease and expense with which the nonconformity may be eliminated; and
- The amount of time in which investors may recover the cost of their investment.

Requirements of amortization include notice by the City to ensure that an adequate amount of time is provided to ameliorate the nonconformity. Processes for review of amortization as well as appeals from the time schedule should also be included in the regulations.

VIII. RECOMMENDATION

It is not the desire of the City to deprive property owners of their investment in land use; however, the City has a strong desire to promote the character and development idealized and legislated in the revised zoning code. As a result, staff recommends permitting certain types of nonconformities but requiring a strict review for any modifications thereof.

As the remaining policy considerations, white papers, and issue papers are addressed, the shape of the zoning ordinance will be fleshed out. When the types of regulations and changes that will be included in the comprehensive zoning revision are known, staff intends to re-address this topic. New policies, new forms of regulations, and new priorities in the code will need to be eased into existing development. When these policies and regulations are known, staff will return to the Mayor and Council with a discussion on what nonconformities will be formed by the changes.

Until that time, staff is hesitant to recommend any particular changes. The 2002 proposed nonconformity text amendments appear to be the course staff will take with regard to nonconformity regulations though modifications may be made to better address the concerns of the comprehensive amendment. The review process required, and particular termination and amendment standards will depend on the number of nonconformities created as well as the types of nonconformities. One recommendation may be including different levels of alteration approval for different types and/or locations of nonconformities.

Nonconforming projects, in the pipeline at the time of zoning text amendment, will be one of the top priorities to be developed in the drafting stage of the revision. In addition, a list should be established of existing nonconformities, and nonconformities that will be created by the zoning text amendment, before actual regulations are adopted. Amortization will also be considered for certain types of nonconformities.

IX. CONCLUSION

Nonconformities have been called the “Achilles heel” of zoning because they can be difficult to regulate. Generally, the policy of nonconformities is to phase them out as soon as possible to effectuate the regulating policy of a community’s zoning code. The continued allowance of nonconformity can undermine the purpose of a zoning regulation. There are some situations, however, where a City’s prohibition on the continuation of or alteration to a nonconformity can

create a major burden on the property owner and only a minor inconvenience for the surrounding community. It is for those situations that nonconformity regulations must consider.

The purpose behind nonconformity regulations is to limit their continuation so that they eventually disappear. In Rockville, nonconformities have been classified into two categories – uses and development standards (lot size, structure regulations, and lot features). For each category, the City sets limits to control when a nonconformity is terminated and/or altered to the point of requiring compliance with the current zoning regulations. An alternative method to require compliance with current zoning standards is through amortization. While not used in the City of Rockville, with established safeguards for property owners, amortization requirements have been an effective means to rid a community of nonconformities.

The control and level of desire for removal of the nonconformity depends on the impact of the nonconformity on the surrounding development and the community as a whole. Where hardships or inconvenience are created for neighbors or pedestrians, the need for regulations phasing out the nonconformity is greater than the minor nonconformity which poses little to no inconvenience. The purpose of any regulation on these uses and development standards is to promote a livable community for the citizens of Rockville.

X. ATTACHMENTS:

1. Article IV (§§ 25-161 thru 25-165) of the Zoning Ordinance for the City of Rockville, Maryland.
2. Schwab, Jim, “A New Vision for Nonconformity Regulation,” APA, April 26, 2004.
3. Proposed Revisions to the Code Addressing Nonconformities, City of Rockville, May 2002.